

Zoning Board of Appeals  
Minutes  
December 6, 2021

A meeting of the Zoning Board of Appeals (ZBA) was held in person and via the Zoom Web Conferencing Service on December 6, 2021 at 7:30 pm.

Present: Mark Jones, William Byron, Ernest Dodd, and David Hartnagel  
Associate Members: Leonard Golder and Michael Naill

Absent: Associate Members Ruth Sudduth and Andrew DeMore

The Meeting was called to order at 7:30 pm

**Member Updates**

Michael Naill reported that he has been attending the Stow Green Committee meetings as the Zoning Board of Appeals representative. The Committee has been looking at all aspects of green energy and considering recommendations on an action plan. They already had discussions with Hudson Light and Power. Hudson Light and Power has already had discussions with the Town of Hudson and are trying to learn from other towns. The Committee is encouraging electric vehicles and electric heat pumps. They are also looking at the building code and environmental impacts. The Committee would also like to meet with the Zoning Board of Appeals to discuss the Comprehensive Permit process to get a better understanding of how it works. Members agreed it would be a good idea to schedule an informal meeting with the Committee. Michael Naill said he would be happy to coordinate the meeting.

**Minutes**

**November 1, 2021 – Ernest Dodd moved to approve minutes of the November 1, 2021 meeting as amended. The motion was seconded by David Hartnagel and carried by a unanimous roll call vote in favor (Mark Jones, William Byron, Ernest Dodd and David Hartnagel).**

**November 8, 2021 - Ernest Dodd moved to approve minutes of the November 8, 2021 meeting as amended. The motion was seconded by David Hartnagel and carried by a unanimous roll call vote in favor (Mark Jones, William Byron, Ernest Dodd and David Hartnagel).**

**PUBLIC HEARING - 126 NORTH SHORE DRIVE SPECIAL PERMIT (VOLUME III, PAGE 851)**

Chairman Mark Jones designated Associate Member Leonard Golder to sit on the public hearing for 126 North Shore Drive.

Members Participating: Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Associate Member Leonard Golder.

The Public Hearing to consider the Application for Special Permit to allow a garage at 126 North Shore Drive was called to order with the Chair reading the Notice of Public Hearing.

Applicant/Owner Karen Madden, 126 North Shore Road explained that the previous owners did a lot of work on the home but there is limited storage. There is no attic, and the basement is the original 1915

basement. They cannot store anything in the basement because it gets water. Because the house is located at Lake Boon, they have a lot of water related items such as boats, a trailer, etc. that need to be stored. Due to covid they are using half of the existing garage as a gym and medical necessities. They have a storage container for things they don't want to put in the basement. Their cars are parked outside in an undeveloped part of the lot which is muddy. They also have a boat and trailer that has recently been stored offsite. They propose a post and beam 2-car garage. It will not be temporary or industrial looking. It does not encroach on the lake or the property line setback to their neighbors. They want to properly store things and think this is the best solution.

Laura Corbin, 116 North Shore Drive, noted that when they first bought the property there was concern that trees would come down. Karen Madden said that less than 10 trees will be removed. All of those trees are away from the lake. Two are large trees.

Carolyn Wheeler, 115 North Shore Drive, is concerned about trees coming down noting that many have been thinned out over the past year or so. She also noted the façade home is becoming very large. They already had a garage added to the structure. She noted the proposed addition, looking from the left, gets big and changes the character of the neighborhood.

David Hartnagel asked if the proposed addition meets the setback requirements. Karen Madden responded yes. The non-conformity is because the lot is less than 1 ½ acres. Karen Madden said they spoke with the Conservation Commission who confirmed the proposed addition is completely outside their jurisdiction.

Leonard Golder asked if any proposed bathroom facilities are proposed. Karen Madden responded that no plumbing is proposed.

Leonard Golder said it appears there will be fewer cars parked on the road and therefore would be less intrusive to the neighborhood. The Applicant noted that they have grown children who park their cars on the street.

The proposed garage is 24'x24', excluding the overhang. The shed overhang shown on the plan is on the proposed garage. There is no overhang on the existing garage. The second floor is for storage.

William Byron said he drove by the other day and saw cars in the front, some parked on the grass and noted that almost every house in that area had cars parked outside. He noted further down the road there is a house with a 3-car garage. He noted this will be a huge structure and asked how long the connection to the existing structure is. The Applicant said it will be about 6-feet – just enough to make the connection and expand the walkway.

William Byron said he sat on the prior hearing and recalled they didn't want to do anything that would be even close to the setbacks. The Applicant said they will have an engineer review the entire lot. There will be no exceptions to the required setback. The builder they hired does barns off site and then brings them in. It can be erected within 2-3 months. There will not be perpetual construction as some other construction projects in the neighborhood. He said 90% of the land abutting the neighbor's lot will remain undeveloped. He thinks it would be worse to have temporary structures on the site. The storage container will go away. For the neighborhood aesthetics and value, the proposed garage will be better.

William Byron said he saw a lot of cars and noted there will probably still be cars parked outside. The applicant said they have 3 cars that are now parked outside. The other cars probably belonged to their grown children who were home from college. The driveway narrows so you can't have two cars parked next to theirs.

Katie Fisher, 1 White Pond Road, noted the original house was built in 1915. The owners who bought it removed some trees. There was a hearing for work within the 35-foot buffer from the lake. William Byron said there was also a Special Permit for the house that was built on the existing footprint.

Maggy Bodkin, 115 North Shore Drive, noted every tree came out from the front of the property in 2017.

***Ernest Dodd moved to close the public hearing. The motion was seconded by David Hartnagel.***

*William Byron said it looks like work has already begun. Karen Madden said they cleared the area for a parking pad. Regardless of the outcome of this proposal, they will need a parking pad. They are hoping this will be approved at the same time. The Motion carried by a roll call vote of five members in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Associate Member Leonard Golder)*

#### **North Shore Drive Deliberations**

***Ernest Dodd moved to approve the Special Permit for 126 North Shore Drive. The motion was seconded by Leonard Golder. Leonard Golder said this is a Special Permit and no variance is required, therefore there is no concern about proving hardship. The proposal is within the parameters of the Special Permit meeting the setbacks. He understands there is some concern about trees which is an area where the ZBA has no jurisdiction, but it does not seem like there will be many trees removed. William Byron said it sounds like there will be a buffer to the abutting neighbor. The motion carried by a roll call vote of five members in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Associate Member Leonard Golder)***

***Ernest Dodd moved to approve the draft decision for 126 North Shore Drive as amended. The motion was seconded by Leonard Golder and carried by a roll call vote of five members in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Associate Member Leonard Golder).***

#### **PUBLIC HEARING – 4 KIRKLAND DRIVE SPECIAL PERMIT (VOLUME III, PAGE 852)**

At 8:20 pm the public hearing to consider an Application for Special Permit for a proposed deck at 4 Kirkland Drive was called to order with the Chair reading the Notice of Public Hearing.

The Chairman appointed Associate Member Michael Naill to sit on the Public Hearing.

The Applicant Richard Grebe noted the proposed construction is for a deck attached to a single-family dwelling.

Chairman Mark Jones noted that it appears the reason for the Special Permit is solely because the property is undersized and that the proposed work meets the required setbacks.

There were no abutter comments.

William Byron said he personally feels this is the type of permit that the Building Inspector should be able to issue.

***David Hartnagel moved to close the public hearing. The motion was seconded by Ernest Dodd and carried by a roll call vote of 5 in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Michael Naill).***

***Ernest Dodd moved to approve the Special Permit for construction of a deck at 4 Kirkland Drive. The motion was seconded by Michael Naill and carried by a roll call vote of 5 in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Michael Naill).***

***Ernest Dodd moved to approve the draft Special Permit Decision for construction of a deck at 4 Kirkland Drive, as amended. The motion was seconded by Michael Naill and carried by a roll call vote of 5 in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Michael Naill).***

#### **PUBLIC HEARING 84-102 GREAT ROAD (VOLUME 853)**

The Public Hearing to consider an application filed by Mark D. Forgues appealing the Zoning Enforcement Officer's response to a request for a Cease-and-Desist Order for an increase/change in use for property at 92-102 Great Road was called to order by the Chairman reading the Notice of Public Hearing.

Chairman Mark Jones designated Associate Member Leonard Golder to participate in the Public Hearing,

Mark Forgues, 9 White Pond and 39 Adams Drive, explained that a license to add a second dealership was approved by the Select Board. He requested that the Zoning Enforcement Officer issue a cease-and-desist order until a special permit is applied for and approved. The Zoning Enforcements response was that the matter is being litigated in the courts by someone else. Mark Forgues said he is an abutter and feels he should have a definitive answer. He said the response from the Zoning Enforcement Officer to not make a decision while something is in court means anybody else in town can say or do whatever they want as long as there was litigation concerning the property.

Mark Forgues said he is asking the Zoning Board of Appeals to overturn the Zoning Enforcement Officer's decision to wait until the matter in court is done and ask him to make a decision. He thinks this request has been blown out of proportion with Mr. Presti's attorney present. He believes the Zoning Enforcement Officer needs to enforce something that is a change and increase in use. The owner has been clearing out the old tar and putting new tar down, clearing, built a carport with lights all without permits. He doesn't really want to get into all that, all he wants the Board to do is overturn his decision to make an opinion on his request for a cease and desist. All that has transpired after his application was filed, with Mr. Presti's Attorney's letter and his response, is not relevant to his request.

Mark Jones noted it appears the primary motivation for the request is the addition of a license. Mark Forgues said it doesn't matter how many licenses are issued, the concern is the addition of a second dealership which is a change in use noting there is no room on the lot for another dealership. They are asking for another dealership and adding more cars on the lot. There is not room on the lot for more cars. Over the weekend there was work done at the site, they were removing pavement, putting down reground tar that is not pervious to oil and water getting into the groundwater. All he is asking is for the Board to tell the Zoning Enforcement Officer to make a decision on his request. If he disagrees with the decision, he will appeal it again and then it will go to court if it doesn't go his way.

The Zoning Enforcement Office Frank Ramsbottom said he has nothing to add.

Attorney Robert McLaughlin, representing Presti Family Limited Partnership, said he thinks the applicant and he are in agreement. The Building Commissioner did not make a decision. The only thing before this Board is the appeal of the Building Commissioner's Decision. If the Board thinks he should have issued a decision, then it should remand the issue back to him. He understands Mr. Forgues said this evening that he will appeal if the decision is that he will not issue a cease and desist. Then the real issue will be back before the board at some other time.

Dorothy Granat, 11 White Pond Road, said she has been a resident for about 20-years. She understands Mr. Ramsbottom's hesitation to make a decision because of the litigation, but the Town has been making decisions to add more to the site for a number of years. Mark Forgues had no choice. As to the question of an increase in use of the property it would be difficult for Mark Forgues to put all that down on paper because there is no site plan for the parking lot. Abutters know with their eyes that the use has increased. She knows from growing up in the neighborhood. Her mother has come before this Board to state there was an increase in use. There are three licenses and three businesses there. Even if Chapel Partners doesn't appear to have cars on site according to the Dept. of Transportation, Mr. Presti has to be getting income and should show evidence where those cars he is selling are located. If the word of the abutters cannot be taken, that information and a site plan is needed for comparison. Mr. Presti has caused problems on the site. He promised to take care of encroachments to Heritage Lane property. Mr. Guiles had a buffer that was cleared. There should be a 30-foot buffer. There was also a buffer to conservation land that was cleared. It has been difficult to constantly hear the response "it has always been there". Site Plan showing the change since 2008 and the change in where he parked his cars is needed.

Robert McLaughlin will not respond to previous comments because beyond the scope of this hearing. Limited to whether you should uphold the building commissioner's decision to not make a determination.

Katie Fisher, 1 white Pond Road, said her biggest concern is about any work on any property that is in court for an issue. She questioned if that does not allow the Town to enforce any rule, regulation, zoning or bylaw. She believes it has to, whether it is a car dealership or putting up lights. Things such as that should be applied for and permitted by the Town. If you can't have something enforced, you could have chemicals explode and start a fire if nobody is monitoring. On any property, whether or not in court, if there is something that requires a permit, it should be applied for.

Marvin Guiles said he has lived in Stow since 1993. He sold his original house on White Pond Road to Dorothy Granit and now lives on Heritage Lane. He asked what information would be helpful to the Board. If it is a question as to increase in use or if property lines have been honored, he can speak to that.

Mark Jones said there is a whole other hearing in the court being reviewed de novo, which will be reviewed by the judge. In a sense that is where those matters would be brought forward. In his opinion that is the likely forum for this discussion. Marvin Guiles said there is no question there have been changes he has seen work done and assumed that things were done with permits. If the Town knew about the changes and did not issue permits, then shame on the town. It seems the Town should send this back to the Building Commissioner to make a decision. It is clear that the issues are not going away while it is in court. His frustration is more with the town for not doing anything. The Board and the Town need to start doing their job and enforce the law.

Dorothy Granat asked if the Zoning Officer can make a decision that does not meet the bylaw. Mark Jones said if it is a non-conforming use that doesn't meet the current bylaw, the owners can continue that use as of right. With regard to this property, a few years ago the Zoning Officer was asked to review the property. His decision was brought to this Board and then this Board's decision was appealed to the courts.

Frank Ramsbottom said there is something in case law that states if the change is de minimis, it can be administratively approved. Usually that would happen when someone applies for a special permit and there is an incredibly minor change.

Leonard Golder said there are two major different areas of law being substantive and procedural. Some of the concerns of abutters are matters of substance as in an improper use or if the use is extended. Then there is a matter of procedure. He is concerned that if this Board gets involved in matters of substance being reviewed in court, then we are treading on dangerous ground. In saying let's see what the court's decision is would be saying let the court decision go forward and not get in the way of a substantive issue.

Frank Ramsbottom, Zoning Enforcement Officer said he can issue or not issue a cease-and-desist order later once the court makes a decision. Leonard Golder agrees, he said this might not be a ripe time to render a cease and desist but later on it could be. He understands why the Zoning Enforcement Officer didn't want to make a decision on issues being litigated.

David Hartnagel said he agrees about substance and procedural. Although there are a lot of emotions about what is being done on the property, all of that is irrelevant as to what is before the Board. He doesn't understand the position that an order cannot be issued just because the property is in litigation. He could understand him saying the issue is in litigation and the decision would be the same. He asked the Zoning Enforcement officer if there could be changes on the property that have been made after the litigation was filed to cause him to issue a decision. The Zoning Enforcement Officer said there could be. David Hartnagel asked if there is anything in zoning that dictates where that line is. The Zoning Enforcement Officer said it is a case-by-case basis. In this case the uses on the property are being reviewed in the court. It is an issue that has come before the Town is being reviewed in the courts.

David Hartnagel said to Attorney McLaughlin that it doesn't sound like he is taking a position on whether the board should order Mr. Ramsbottom to issue a cease and desist. Attorney McLaughlin said he is not taking a position. It is up to the Board. The Board would either send it back to the Zoning Officer or not. He would be concerned if the Board, as part of this hearing, made a determination on the nonconforming use. Those issues are not before the Board.

Ernest Dodd said he supports the Building Commissioner's decision. The use issue is already the Courts. The ZBA made a decision, it was appealed and now in court. Until the Court makes a decision what can happen is up in the air.

Leonard Golder said he is looking at this as a procedural matter and it is not ripe to discuss those issues while before the court.

William Byron asked Marvin Guiles if he thinks things being done on the property now have been without permits being issued. Marvin Guiles said that is what he understands from Katie Fisher and others.

William Byron asked Mark Forgues if he is asking for the cease and desist because there are two dealerships. Mark responded yes, that is a change in use as of a couple of months ago – not what is in litigation. He has made the lot bigger with the removal of trees. He took the buffer away. Dumpsters were placed on Mr. Guiles property that he said would be removed and have not. He doesn't trust Mr. Presti's word. He is just asking for a decision on if the Zoning Enforcement Officer should make a decision. The ZBA is the overseer of him, and you should tell him to make a decision. He asked if the Board has been in contact with Town Counsel as he is curious as to why Mr. Ramsbottom knows about previous issues. Mark Jones said the record is in his file.

Rich Presti said, as the property owner, he has more facts on the property than Mark Forgues does. There seems to be confusion about issuance of licenses. He is not positive but thinks there are about 10 licenses in town. A license is the ability to do something. It doesn't mandate one to have a dealership. The idea of three licenses on the property happened as recently as three years. This is not the first time. He has had a license since 2010 and never added anything on site and never sold a car. He said the Select Board is now reviewing his license because he doesn't sell cars.

Leonard Golder said it appears that the number of licenses is not an issue.

William Byron ask how you describe dealerships. He understands one is primarily online sales.

David Hartnagel said this conversation is irrelevant. Whether Mr. Ramsbottom should render a decision is the only thing relevant to this hearing.

***David Hartnagel moved to close the Public Hearing. The motion was seconded by Ernest Dodd and carried by a unanimous roll call vote of 5 in favor (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Leonard Golder).***

Mark Jones announced that the Public Hearing is now closed, and the Board is no longer able to take new information.

### **Deliberations**

David Hartnagel said he doesn't see a basis for the Building Commissioner not rendering a decision. Even if there is literally no change in use or not. He understands the case is in litigation and even if the decision is there is no change in use a decision should be made. He is concerned about setting precedent. He takes the issue of precedent seriously, noting the what if the use was changed to something like selling fireworks. If the residents of the town want to keep making requests and repeat it all over again and again it would be their choice. He understands where the Building Commissioner is coming from but just because some aspect is in litigation is not enough. It is interesting that Mark Forgues tied his request to a Select Boards issue. A decision could be made by ignoring the old issues and basing the decision on the current request. Mr. Ramsbottom can respond based on recent issues brought forward

Leonard Golder said his concern is the overlap with court proceedings. David Hartnagel said he understands the risk with the overlap. If there is concern that the Board's decision could have an effect on the litigation, then we should consult with Town Counsel. A decision should be issued as opposed to not.

Members discussed whether to consult with Town Counsel. David Hartnagel said one risk is if this board affirms the deferral, he assumes the applicant could appeal that to court.

Mark Jones noted he understands the town is named but not an active participant in the litigation.

Karen Kelleher noted that typically an appeal in response to a Zoning Enforcement Officer's decision. In this case, there is no decision. She also noted that Mark Forgues stated that this board oversees the Building Commissioner, which is not the case, he is appointed by the Select Board. She questioned if the Board has the authority to act on a non-decision. David Hartnagel asked if it is a non-decision or is it a denial and the reason for the denial

The Zoning Enforcement Officer said he believes someone can appeal a deferral of a decision.

Members agreed to consult with Town Counsel and tentatively schedule a meeting for Thursday, December 16<sup>th</sup> to deliberate on a decision, provided that a response is received from Town Counsel.

### **January Meeting Agenda**

Mark Jones suggested potentially scheduling the Building Commissioner on the January agenda to discuss zoning. Mark – agenda for next month – Potentially – zoning and meet with BI

### **Grandfathered setbacks for new construction**

William Byron said he feels that grandfathered setbacks should apply only to existing non-conforming structures and not new construction.

### **Adjournment**

At 9:44 PM, David Hartnagel moved to adjourn the meeting. The motion was seconded by Leonard Golder and carried by a unanimous roll call vote (Mark Jones, William Byron, Ernest Dodd, David Hartnagel and Associate Members Leonard Golder and Michael Naill.

Respectfully submitted,

Karen Kelleher  
Administrative Assistant